

IN THE WESTMINSTER MAGISTRATES' COURT

The Government of the United States of America v Guy Denton Savage

1. The government seeks the extradition of Mr Savage to face trial in the United States District Court for the Middle District of Tennessee, Nashville Division, on a 21 count Indictment alleging offences, said to have been committed between December 2003 and December 2008, which are said to have breached the US restrictions on the export and import of firearms and firearm components, together with charges of fraud relating to false statements or entries in shipping documents designed to disguise the unlawful smuggling activity. I note that in Mr Han's affidavit, at paragraph 20, he gives the dates as between December 2003 and December 2009, as does the Indictment at paragraph 22, but I can see no reference to any date later than November 2008 being referred to in the conduct described in the Indictment. Accordingly, I am working on the basis that the reference to December 2009 is a mistake, and the relevant end-date is December 2008.
2. Mr Savage was arrested in connection with these proceedings on 8th February 2011 pursuant to a fully certified request dated 27th January 2011. He was held in custody for a short while and then released on bail.
3. The case has been listed before the court on a number of occasions and on 6th May 2011, (when Mr Savage was represented by counsel), it was accepted on his behalf that the requirements of section 78 of the Extradition Act 2003 (the Act) had been met i.e. that (a) Mr Savage was the person requested in the extradition request, (b) the offences specified in the request were extradition offences and (c) the extradition request papers sent by the Secretary of State had been served on Mr Savage. The case was then adjourned to allow Mr Savage to consider whether there were any bars to his extradition, human rights or health issues that he might wish to advance in challenge to this request. Unfortunately Mr Savage has been denied Legal Aid – see paragraph 144 of Mr Savage's *habeas corpus* Petition, dated 16th September 2011. This document is not an affidavit, it has not been executed in proper form before a court, Commissioner for Oaths or Notary, and Mr Savage's declaration that it is true and correct, at paragraph 175, does not convert it into an affidavit. When referring to this document hereafter I shall refer to it as the '16th November Petition'. As I understand it, since May, Mr Savage has not had any legal assistance. He has had nearly 5 months to prepare for the extradition hearing (24th October) and it is a great pity that during that period he has devoted so many hours preparing and serving documents relating to collateral litigation – see paragraphs 5 to 13 below - rather than concentrating his mind on how to deal with the extradition request.
4. Mr Peter Caldwell represents the government and he has provided (1) a 4-page opening note, dated 28th March 2011, (2) an 8-page skeleton argument, dated 23rd October 2011. Mr Savage represents himself and he has provided (1) a 2-page

undated skeleton argument & abuse of process (2) a 5-page skeleton argument & abuse of process, dated 6th October 2011, (3) a 5-page (including the annex) undated application under the Police (Property) Act 1897, (4) a 2-page undated proof of evidence, (5) a 2-page Proof of evidence & counterclaim, dated 6th October 2011 (6) a 12-page psychiatric report prepared by Dr Susan Thompson, dated 5th September 2011, (7) a 27-page Abuse of Process & Reply to Proceedings document dated 7th November 2011 and (8) a 1-page letter dated 14th November 2011 enclosing American litigation documents and 2 x CDs (355 pages). In addition I have seen various items of correspondence which I need not list here. In the next paragraphs I deal with the documents I have seen and read that relate to 'litigation' in the United States and in the United Kingdom

Mr Savage's litigation in the United States

5. Mr Savage is the Petitioner in an application for a writ of *habeas corpus* issued in the United States District Court for the Middle District of Tennessee where the respondents are the United States of America, US Department of Justice, Jerry E Martin, John S Han, John Webb, The United States District Court Middle District of Tennessee and Todd J Campbell. The case has the number 3:11-00015 (the same number as on the Indictment) and Mr Savage has provided me with what appears to me to be three 2-page petition notices addressed respectively to (1) Jerry E Martin, (2) John S Han and (3) John Webb. These documents start by stating "Please take notice that on October 18, 2011 a petition for a writ of *Habeas Corpus* is filed in the above entitled court." Each notice appears to have a genuine stamp indicating that the notices were received in the clerk's office of the US District Court Middle District of Tennessee on 19th October 2011.
6. In support of his American litigation Mr Savage has provided me (on the day of the hearing 24th October) with the 79-page 16th September Petition, attached to which are a number of documents:
 - a. **Attachment A** is an 8-page document which appears to be a recitation of what Mr Savage contends to be the relevant applicable law.
 - b. **Attachment B** is a letter from Susan Anand, who describes herself as a Notary Public, addressed to Judge Todd J Campbell at the United States District Court. The letter says that it encloses –
 - i. Affidavit of Individual Surety
 - ii. Affidavit of denial of Corporate existence
 - iii. Notice of settler and appointment and instructions to Trustee
 - iv. Invoice
 - c. Behind the letter are 2-pages of tracking history which I think is intended to provide evidence that the letter was indeed sent to Judge Campbell. Because

of the poor quality of the photocopy document I am unable to identify the recipient 'for job number 172061 going to Nashville in the USA.'

- d. Next is the 'Affidavit of Individual Surety' sworn before Ms Anand on 1st September 2011.
- e. Next is a complete copy of the US Indictment.
- f. Next the 'Affidavit of Denial of Corporate Existence' dated 1st September 2011 and sworn before Ms Anand on the same day.
- g. Next the 'invoice' claiming US \$ 245,550,000.00.
- h. **Attachment C** is a copy of a letter from Mr Savage dated 28th September 2011 addressed to Judge Campbell referring to case no. 3:11-00015 attaching a notary affidavit of non-response, dated and sworn on 28th September 2011, a copy of the invoice, which documents are further copied and provided.

There is nothing from the United States District Court (as of 24th October) to suggest that any of the documents referred to in this paragraph have been received by that court, although for the purposes of the extradition hearing nothing turns on that, and I am content to assume that they have been received.

7. In respect of 'claims' made in this jurisdiction Mr Savage has signed and sworn an affidavit of non-response on 5th October 2011 attached to which he attaches various exhibits –

- Exhibit A A letter from Mr Savage, dated 17th September 2011, addressed to the CPS.
- Exhibit B The CPS response dated 21st September 2011.
- Exhibit C Further correspondence in which Mr Savage claims entitlement to damages and compensation from the UK taxpayer. He attaches two invoices claiming (1) £163,736,750.00 and (2) £45,815,000.00. He demands payment in 'Royal Mint Bullion Sovereigns since Sterling currency is essentially valueless.' Additionally he 'requires a Knighthood from Her Majesty's Government for (his) lifetime of Service to the Shooting Industry & Shooting Sports in the New Years Honours List.'
- Exhibit D A letter from Mr Savage dated 25th September 2011 addressed to the CPS
- Exhibit E A letter from the CPS dated 26th September 2011 acknowledging receipt of Exhibit D.

8. Mr Savage has additionally put before me (1) a 6-page document, entitled 'Motion for Default Judgement,' (2) a 14-page Memorandum of Decision and (3) a 'Default Judgement,' each of which bear the date 23rd October 2011, and purport to have been sealed by the United States District Court. It says at the bottom of the Default

Judgement "WITNESS: the SEAL of the COURT this 23rd day of October 2011." Mr Savage has signed each document and he told me he appended his own seal!

9. I have read all of Mr Savage's material. At the hearing on 24th October I refused to allow Mr Savage to refer to, or to rely upon any aspect of the material he has presented, for the purpose of making submissions directed to either any litigation he is conducting in the United States or in respect of any legal claim he thinks he might have here in the United Kingdom or for the purposes of challenging this court's jurisdiction to proceed with the extradition hearing in accordance with the provisions of the Act. I so directed because I was satisfied that his presentation of this material would disrupt and delay these extradition proceedings. Almost all of this material is irrelevant to any issue the court has to determine in the extradition proceedings. Within paragraphs 19 – 89 of the 16th September Petition there is a largely coherent account of the conduct of the American investigation, in so far as it impacted upon Mr Savage, and there are elements therein that Mr Savage is entitled to rely upon for the purposes of submitting abuse of process, e.g. injustice caused by delay (in particular in relation to the repeated requests for a proffer interview which he claims was inexplicably cancelled on each occasion) and the likelihood of a fair trial given the scope and content of pre-trial publicity with the potential of contamination of the jury pool. These are all matters I will take into account in due course.
10. However, Mr Savage is employing the tactic employed by those who, in this jurisdiction, call themselves 'Freemen of the Land.' Such persons have been moderately successful in creating considerable havoc and disruption in courts up and down the country, such that cases have to be adjourned and apparently, in some instances, abandoned.
11. If one undertakes a web search e.g. Googles "Freeman of the Land" one has a choice of many websites that explain the tactics employed and e.g. at <http://www.libertarian.co.uk/lapubs/legan/legan050.pdf> one can read an interesting article by Professor John Kersey entitled:

THE FREEMAN ON THE LAND MOVEMENT:
GRASS ROOTS LIBERTARIANISM IN ACTION

which includes this passage –

The other is that these actions create such a level of confusion and disruption among the authorities that, regardless of the validity of their underlying principles, they effectively prevent the court process from taking place, or place it under an intolerable strain in respect of time and resources. Both possibilities achieve the desired end of those concerned in these actions, which is to nullify or substantially constrain the action against them, and indeed to make the cost of recovering any monies concerned prohibitive when compared to the expense involved.

12. Mr John Webb in his supplemental affidavit, dated 21st October, explains that the tactic employed by Mr Savage "is a tactic commonly used by US tax protestors or "Sovereign Citizens" in an effort to intimidate ..." it sounds very similar to the tactic

employed by Freeman of the Land which I understand is a movement that originated in the United States.

13. The long and the short of it is that this court was not prepared to allow Mr Savage to address the court in furtherance of any of these 'litigation' or 'jurisdictional' points. The court had an opportunity to read and consider the documents in advance of the hearing and it was clear to the court that to engage with Mr Savage on issues of 'jurisdiction' would have resulted in a considerable amount of court time being taken up on matters that are plainly unarguable (if not absurd) and not relevant to the issues the court needs to resolve under the Act.
14. Having explained that I was not prepared to hear Mr Savage on what I am calling, for shorthand purposes, jurisdictional points, I made the following preliminary decisions: Firstly, I explained that this court had no jurisdiction to go behind the section 70 certificate issued by the Secretary of State. Mr Savage asserts the certificate should not have been issued. I explained that any challenge he might wish to make would have to be by way of seeking a judicial review. Secondly, I refused leave to re-open the previously made decisions as to identity and extradition offences – see paragraph 3 above. Thirdly, I refused an application by Mr Savage that I should constitute the Westminster Magistrates' Court as a court of record. I propose now to deal with the extradition issues that were raised. I would like to point out that it has taken me quite some time here to deal with these preliminary matters and it took quite some time before I could convince Mr Savage that the court would not entertain these 'jurisdictional' submissions. As it is, the hearing lasted all day.

Abuse of process

15. This requires the court to follow the procedures laid down in **R (USA) v Bow Street Magistrates' Court [2006] EWHC 2256 (Admin)** The Tollman case, and in particular to apply paragraph 84.
 - a. The conduct alleged to constitute the abuse must be identified with particularity;
 - b. The court then must consider whether the conduct, if established, is capable of amounting to an abuse of process;
 - c. If the court is of the view that it might, it must consider whether there are reasonable grounds for believing that such conduct may have occurred;
 - d. If the court is of the view that there are, it should not order extradition unless satisfied that such an abuse has not occurred.
16. Mr Savage has failed to identify with particularity the conduct he alleges constitute the abuse. There are no reasonable grounds for believing any abusive conduct may have occurred. I find no abuse.
17. The court had given Directions as to the service of skeleton arguments etc., requiring Mr Savage to give detailed advance notice of any submissions he proposed to make in the extradition hearing; unfortunately Mr Savage failed to comply. His skeleton dated 6th October was not a helpful document. On enquiry from the court Mr Savage said he wished to raise all possible bars. As he was unrepresented I took him through each of the possible bars identified in section 79 of the Act in order to ascertain whether he

wished to raise any such bar and the court attempted to identify whether he had any viable submissions.

Double Jeopardy – section 80

18. Mr Savage accepted that this bar is not relevant in these proceedings.

Extraneous considerations – section 81

19. Mr Savage submits that this planned prosecution of him in America is being pursued for the wholly improper reason that the American authorities were trying to engineer foreclosure of all of Mr Savage's business interests in the United States of America because he was a British national. This wrongful action was intended to protect wholly American run firearms' businesses and allow such companies to thrive by removing the competition provided by Mr Savage, a foreign national, and his associated companies. Mr Savage bears the burden of establishing this bar by showing that there is a 'reasonable chance' or a 'serious possibility' of prejudice. This he has failed to do.
20. The additional representations made at paragraphs 98 to 101 in document (7) - (see my paragraph 4) speak of the anti-gun views of those involved in this prosecution and asserts the case against Mr Savage is 'highly charged with political malice etc.,' but these bald assertions are unconvincing and lack any evidential support and to my mind fail to raise any proper basis for suspecting Mr Savage might suffer any prejudice.
21. Mr Caldwell's response to the extraneous considerations submissions is at paragraphs 23 and 24 of his skeleton and refers to Special Agent Morrow's affidavit. I am satisfied that Mr Savage has not established this bar; there is no reasonable chance / serious possibility that this request for Mr Savage's extradition (though purporting to be made on account of the alleged extradition offences) is in fact being made for the purpose of prosecuting or punishing him on account of his nationality, or if extradited that he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his nationality.

Passage of time – section 82

22. The passage of time here is very short. When this bar is raised one looks at the end date of the alleged offending, here December 2008, and considers the period from that date to now i.e. just coming up to three years. Mr Savage is required to establish that, by reason of that 3 year delay (and only in respect of that delay) it would be unjust or oppressive to extradite him.
23. In John Webb's supplemental affidavit, at paragraph 15, there is a brief chronology.
24. Mr Savage addressed me at some length about how he sees the behaviour of the prosecuting authority as being manipulative – see paragraphs 17 to 42 of the 16th November Petition – however, many of these events relate to a period prior to that which is under consideration here.

25. Further representations are presented within paragraphs 102 to 106 in document (7) – (see my paragraph 4).
26. Mr Savage told me of the sad death from breast cancer in 2008, of his personal assistant, Inge Botschi. According to Mr Savage she had devolved responsibility and was the author of many emails which the prosecution may seek to rely upon as proving acts and declarations by Mr Savage. Mr Savage will be unable to call Ms Botschi as a witness (she might, for example, have been in a position to say, in respect of the content of any particular email, that she did not have specific instructions from Mr Savage to state a contentious element within the email and must have either misunderstood his instructions or (incorrectly) assumed that was Mr Savage's position.) Mr Savage told me that he has no direct knowledge of any of the emails or their content and he is concerned that Ms Botschi may have decided to act under her devolved responsibility to his detriment. Firstly, this court has not been provided with the exact date of Ms Botschi's death. Secondly, she may have been off work for some period prior to her death and it would have been helpful to have been provided with such information. Thirdly, even if there had been no delay, it seems likely that Ms Botschi would not have been alive by the time that any contested trial might have taken place. Fourthly, there is no reason to suppose that Ms Botschi's death will render any trial of Mr Savage unjust. The trial process is perfectly capable of dealing with such a situation fairly and the concerns of Mr Savage strike me as highly speculative. I note that the death of Ms Botschi and the issue raised here do not feature in the 16th November Petition.
27. Mr Savage has concerns that the police in the UK and/or the authorities in the USA have tampered with the evidence (the contents of the seized computers). He 'knows' there has been such tampering. If this is correct it is not connected to delay. If it is possible to establish that critical evidence has been 'lost' then it will be a matter for the trial judge to deal with that situation in a way that ensures that Mr Savage receives the fair trial to which he is entitled. If the jury concludes that the prosecution have behaved unfairly towards Mr Savage or that evidence has been deliberately compromised to his detriment then no doubt they will reflect such findings by acquitting him.
28. As a direct result of the delay Mr Savage complains that he is now much less able to provide "quality detailed evidence" which he could have done if only he had been given the opportunity earlier. Now, with the loss of his business, the loss and/or destruction of business documents it is impossible (he claims) for him to be in a position to give a clear and coherent account of his actions. He is concerned that he will necessarily appear vague and that might well be misinterpreted by a jury as dishonesty.
29. None of these points, either individually or collectively, establish the bar that it would be either unjust or oppressive to extradite Mr Savage by reason of the passage of time since he is alleged to have committed these offences.

Hostage-taking considerations – section 83

30. Mr Savage accepted that this bar is not relevant in these proceedings.

Human Rights – section 87

31. I now turn to a consideration of whether Mr Savage's extradition would be compatible with his Convention rights. In particular Mr Savage submits that his extradition will not be compatible with his rights under article 3, 4, 5, 6, 7, 8, 9 & 10 of the ECHR.

Article 3 – No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

32. Mr Savage makes generalised submissions that prison conditions within the State of Tennessee are such that there are inadequate facilities to deal with someone like him who is mentally unwell (but see paragraphs 18 & 19 of Mr Webb's affidavit) and further that any time he is kept in custody will amount to inhuman and degrading treatment. These contentions are not backed up with any evidence, cogent or otherwise. Mr Savage is required to show, that there are substantial grounds for believing that he would be at a real risk of being subjected to article 3 ill-treatment, if extradited. The ill-treatment needs to be of a high order and it is a high threshold. This he has failed to do. The section 91 submission is based upon the state of Mr Savage's mental health and the risk that he might commit suicide. Those same issues are said to form the basis for this human rights' challenges. Given the inter-relationship between articles 3, 8 and 91 where the issue is risk of suicide the reality here is that if Mr Savage is unable to succeed under section 91 then he is bound to fail under articles 3 & 8. I am satisfied Mr Savage has failed to establish that his extradition would be incompatible with his article 3 rights. I will provide more detailed reasoning when I deal with section 91.

Article 4 – Prohibition of slavery and forced labour

33. If I understand Mr Savage's submission here he is concerned, that if he is convicted and sentenced to a term of imprisonment, then he may be forced to undertake work within the prison.

Article 4.2 No one shall be required to perform forced or compulsory labour.

4.3 For the purpose of this article the term "forced or compulsory labour" shall not include:

- a any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this Convention or during conditional release from such detention;

34. There is nothing in this submission.

Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) ...
 - (b) ...
 - (c) The lawful arrest or detention of a person effected for the purpose bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) ...
 - (e) ...
 - (f) The lawful arrest or detention of a person to prevent ... or of a person against whom action is being taken with a view to deportation or extradition.
2. ...
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. ...

35. Mr Savage submits the American judge will not honour the equivalent rights available to those in America facing criminal legal proceedings there. The equivalent protection of Article 5 ECHR in America is the 5th Amendment to the US Constitution - Trial and Punishment, Compensation for Takings which was ratified on 15th December 1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

36. It is not clear to me quite what Mr Savage's submission is on this article, but if it is that he will not receive 'just compensation' and that is related to the matters I have dealt with in my paragraphs 5 to 13 above then I have nothing further to say on the matter. At paragraph 109 in document (7) – (see my paragraph 4) Mr Savage

reiterates his 'jurisdictional' submissions which, for the reasons given earlier, I am not prepared to address.

37. I am satisfied there would be nothing incompatible with Mr Savage's article 5 rights if he were to be extradited to the USA.

Article 6 – Right to a fair trial

38. For the sake of completeness if Mr Savage intended also to submit that his fair trial rights protected by article 6 of the ECHR were at risk then the equivalent rights available in America are provided for by the 6th Amendment to the US Constitution - Right to Speedy Trial, Confrontation of Witnesses, which was ratified on 15th December 1791.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

39. See paragraph 110 in document (7) – (see my paragraph 4) where Mr Savage refers to prejudicial comments and news reports made by the prosecutor which he feels are likely to pollute/ contaminate the jury pool and result in him being denied the fair trial to which he is entitled. It will be for the trial judge, at the time of the proposed trial, to consider all these points and to determine whether a fair trial is possible. There is no reason to suppose the trial judge would fail in his duty to act only in such a way that ensured a fair trial. If no fair trial is possible (and this is a decision for the trial judge) then Mr Savage should be discharged. See also paragraph 13 of John Webb's supplemental affidavit.

40. Again it would not be incompatible with Mr Savage's article 6 ECHR rights to order his extradition to the USA.

Article 7 - No punishment without law

41. I have no intention of addressing these absurd submissions.

Article 8 – Right to respect for private and family life

42. Towards the end of the afternoon on 24th October we reached the point where Mr Savage said he wished to submit that it would be incompatible with his article 8

ECHR rights, and those of his children, to order his extradition. I directed that within 14 days Mr Savage could, if he wished, serve on the court written submissions on this point (or indeed any of the points we had covered during the day), and I would take such submissions into account when preparing this written ruling. In the result Mr Savage availed himself of this opportunity and in paragraph 112 in document (7) – (see my paragraph 4) he makes the point that in his view the decision in **Norris** is at odds with the findings of the Human Rights Joint Committee – Fifteenth Report The Human Rights Implications of UK. I had sought to assist Mr Savage by directing his attention to the case of **Norris** and he told me he had read that case but did not really understand it.

43. The jurisprudence on this issue is very clear. The question is whether the interference is disproportionate. There is nothing out of the ordinary or exceptionally serious in the consequences that extradition would have for Mr Savage or his children. See the approach in relation to article 8 ECHR in **Norris v Government of the United States of America** [2010] UKSC 9 at paragraph 56:

“The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves. That, no doubt, is what the Commission had in mind in *Launder* (1997) 25 EHRR CD67, 73 when it stated that it was only in exceptional circumstances that extradition would be an unjustified or disproportionate interference with the right to respect for family life. I can see no reason why the District Judge should not, when considering a challenge to extradition founded on article 8 explain his rejection of such a challenge, where appropriate, by remarking that there was nothing out of the ordinary or exceptional in the consequences that extradition would have for the family life of the person resisting extradition. “Exceptional circumstances” is a phrase that says little about the nature of the circumstances. Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition. A judge should not be criticised if, as part of his process of reasoning, he considers how, if at all, the nature and extent of the impact of extradition on family life would differ from the normal consequences of extradition.”

44. I am satisfied there would be nothing incompatible with Mr Savage’s or his children’s article 8 rights were he to be extradited to the USA.

Article 9 – Freedom of thought, conscience and religion
Article 10 – Freedom of expression

45. Mr Savage raises these articles for the first time in his paragraph 113 in document (7) – (see my paragraph 4). I do not understand his submission on these articles which as far as I can see are of no relevance here.

Section 91 Physical or mental condition

46. Mr Savage called as a witness Dr Susan Thompson who gave evidence in accordance with her 12-page report, dated 5th September. Anyone reviewing this ruling will want to read the report very carefully. In summary, on examination she found Mr Savage was suffering the effects of post traumatic stress disorder (PTSD) occasioned by his arrest on 8th February and in her opinion he is suffering from a severe depressive episode ICD-10 code F32.2 and also fulfils all criteria for PTSD ICD-10 code F43.1 and he is also at high risk of completed suicide, especially if he loses regular contact with his daughters.

47. I set out below paragraph 39 of the report in full:

“Finally, I believe it would be oppressive to extradite Mr Savage as I firmly believe he will complete suicide if this occurs. Mr Savage has had a horrendous experience over the last three years, and his fragile state indicates he would understandably end his life rather than endure further hardship. Having interviewed many individuals who have witnessed terrible incidents in wartime, I assess Mr Savage as being in a similarly poor state of mental health, but without the support of appropriate legal (aid) and medical services.”

48. The extradition court regularly has to deal with persons, subject to an extradition requests, who claim and sometimes provide supporting medical (psychiatric) evidence (as here) that if extradited they will kill themselves.

In **Marius Wrobel v Poland [2011] EWHC 374 (Admin)** the court reviewed the ‘suicide authorities’. As Bean J said “If a very high risk was sufficient in a case governed by Article 3, I cannot see that it would be right to interpret section 25 in a way that would be inconsistent, or indeed incompatible, with Article 3. I cannot see any reason why Parliament should have intended to impose a more stringent test under section 25 than under the Human Rights Act and Article 3 itself. I therefore conclude that the test is, as stated in paragraph 29 of Jansons, whether the risk that the fugitive will succeed in committing suicide, whatever steps are taken, is on the evidence sufficiently great to result in a finding of oppression.

In deciding what risk is sufficiently great to result in such a finding it must be borne in mind, firstly, that there is a public interest in giving effect to treaty obligations (see Howes and also Norris [2010] 2 AC 487); secondly, that it should be assumed, at any rate in a European arrest warrant case under Part 1 (such as the present one and Jansons), that the requesting state has the facilities to cope with and treat mental illness. Whether or not the treatment is, in all respects, as good as the appellant might receive in London is not to the point. Thirdly, a high threshold has to be surmounted in order to show oppression. Finally, in a case based on the risk of suicide there must,

in my view, be independent and convincing evidence of a very high risk of suicide if the fugitive is returned."

There are helpful passages to be found in **R on the application of Ian Griffin v (1) City of Westminster Magistrates' Court (2) Tribunal de Grande Instance, France [2011] EWHC 943 (Admin)** where at paragraphs 48 and 49 Collins J said:

48. It is in my view obvious that if there were a breach of a person's human rights resulting from his extradition, it would be oppressive to extradite him. The question is whether oppression within s.25 extends beyond a breach of human rights. It is capable of doing so on given facts. For example, oppression may be established where there has been substantial delay since the offence for which extradition is sought was committed. Lord Diplock's observations in *Kakis v Cyprus* [1978] 1 WLR 779 are in point. At p.782 he said that oppressive was 'directed to hardship to the accused resulting from changes in the circumstances that have occurred during the period to be taken into account.'
49. However, in cases such as this of suicide risk where delay is not in issue it is difficult to see how it could be said to be oppressive to extradite unless to do so would constitute a breach of human rights. My only caveat is that I would recognise that the seriousness of the offence in question could be relevant. It may be that the threshold could arguably be lowered if the offence was truly to be regarded as not at all serious since it might then be said in terms of Article 8 that removal was disproportionate. But that is not this case.
49. The government has not sought to obtain its own independent psychiatric evidence. Dr Thompson gave evidence and was cross-examined. I did not find her a satisfactory witness. I make the following points:
 - (1) Prior to Mr Savage's arrest on 8th February there is no suggestion of (i) any prior psychiatric problems or (ii) previous incidents of self harming or (iii) attempting suicide.
 - (2) Since the 8th February to date there have been no incidents of self harming or attempts at suicide.
 - (3) In paragraph 14 of the report Mr Savage told Dr Thompson that whilst detained in HMP Wandsworth he sequestered a plastic bag as he wanted the opportunity to kill himself. This is an uncorroborated self-serving account for which there is no independent evidence. It is not suggested by him that he thereafter attempted to use the bag to harm himself.
 - (4) Dr Thompson's only interview with Mr Savage was for 2 ½ hours on 9th August.
 - (5) It would seem that Mr Savage provided Dr Thompson with certain selected documents e.g. the decision of HH Judge Samuels in the Knightsbridge Crown Court KCC No: T970581 of the 11th March 1998, but not e.g. the extradition request papers.
50. Paragraphs 1 to 17 of the Report covers the historical background based solely on an account given by Mr Savage. Paragraphs 19 to 24 are findings and Mr Savage's account of how he feels, and paragraphs 34 to 39 are the opinions and recommendations of Dr Thompson. The report is peppered with emotive comment, and e.g. in paragraph 38 Dr Thompson says "I cannot see how this could be the case here". Dr Thompson is not qualified to make such a comment, and given that she has

never even seen the extradition request, she has no business to express such an opinion. Equally Dr Thompson, in that same paragraph, is making observations about legal aid which I suggest is not within her sphere of competence.

51. Dr Thompson told me of her experience in dealing with soldiers returning from conflict zones such as Iraq and Afghanistan and that was her main source of experience of PTSD and its effect on such patients. I would expect such soldiers generally to give, in so far as they were able, honest and accurate accounts of the historical background and would have no reason to exaggerate symptoms or otherwise mislead her. In the criminal justice field psychiatrists need to be much more aware of the possibility of being manipulated by those who have every reason to achieve a beneficial outcome. In the context of this case I would expect them to read the extradition request and describe what steps were employed to rule out (in so far as that is possible) any suggestion of malingering. When giving evidence Dr Thompson said there was nothing to suggest malingering, but that is not enough. I have to say Dr Thompson gave the impression that she found Mr Savage to be a wronged man with whom she had every sympathy. She never asked to see the extradition request and appears to have accepted, without question, everything Mr Savage told her. She did nothing to test the correctness of the account being given to her. In my view she allowed herself to lose the dispassionate and professional approach to be expected of an expert psychiatric witness in extradition proceedings. I found her unconvincing and I neither trust her judgment nor her conclusions.
52. The test that Mitting J propounded in paragraph 13 of **Rot v District Court of Lublin, Poland [2010] EWHC 1820 (Admin)** was "The question must ... be addressed and answered ...: would the mental condition of the person to be extradited make it oppressive to extradite him? Logically, the answer to that question in a suicide risk case must be no unless the mental condition of the person is such as to remove his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying, and therefore may make it oppressive to extradite him. Untidy though it may be, and while **Jansons** remains good authority, the question must be approached in a somewhat less logical manner. When, as in **Jansons**, there is uncontradicted evidence that an individual who has made a serious attempt to kill himself will kill himself if extradited, it may be right to hold that it would be oppressive to extradite him. Anything less will not do." This test has been approved save that the last sentence – *anything less will not do* – should be disregarded. Here Dr Thompson did not address her mind to this test.
53. In paragraph 18 of John Webb's supplemental affidavit there is a brief summary of how the Bureau of Prisons (BoP) deal with those who need medical attention and/or the provision of mental health care when detained in American prisons. There is an assumption in relation category one territories, rebuttable only on presentation of cogent evidence that suggests otherwise, that those detained in Council of Europe prisons will receive adequate health care. The level of health care provided by the BoP in America is almost certainly likely to be of a higher standard than that available in many European prisons. It is appropriate to repose confidence in how the BoP will care for Mr Savage. Mr Savage has presented no evidence, cogent or otherwise, to contradict such an assumption.

54. On the available evidence I am satisfied that there is no substantial risk that Mr Savage will succeed in committing suicide, whatever steps are taken. There is no evidence sufficiently great to result in a finding of oppression. The American authorities will be alive to the concerns in relation to Mr Savage's mental well-being and appropriate steps can be taken to ensure that, if detained, he will be properly cared for and protected from harming himself.
55. So in relation to Mr Savage's mental health and any risk that he might take his own life I am satisfied that his extradition is not unable to proceed whether one is considering articles 3 and/or 8 and/or section 91 of the Act.
56. I am satisfied that Mr Savage's extradition is compatible with his Convention rights and I propose sending this case to the Secretary of State, pursuant to section 87 (3) of the Act, for her decision as to whether or not he should be extradited to the United States of America.
57. As Mr Savage has no lawyer I have told him of his right to a statutory appeal against my decision- see section 103 of the Act - and I have drawn his attention to sub-section (9)

"Notice of an appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 14 days starting with the day on which the Secretary of State informs the person under section 100(1) or (4) of the order (s)he has made in respect of the person."

Following the recommendation made at paragraph 10.9.(vi) of the Scott Baker Review of the UK's extradition arrangements (30.09.11) I have provided Mr Savage with a simple guide explaining his right of appeal, the time limit and what must be done in this period as was suggested in *Szelagowski v Regional Court of Piotrkow Trybunalski Poland* [2011] EWHC 1033 (Admin).

Nicholas Evans

Nicholas Evans
District Judge
Westminster Magistrates' Court
30th November 2011